UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum A.D.

TO : W. Bruce Gillis, Jr., Regional Director
Region 27

DATE: September 30, 1987

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

530-4040-5000
590-7575
590-0100

SUBJECT: Eatherton Masonry, Inc.
Case 27-CA-10081

Dach Masonry, Inc.
Case 27-CA-10084

These Section 8(a)(5) cases were submitted for advice as to whether bargaining relationships established prior to the enactment of Section 8(f) should be regarded as Section 9(a) relationships. 1/

FACTS

Eatherton Masonry, Inc. and Dach Masonry, Inc. ("the Employers") are engaged in the construction industry as masonry contractors in the Denver, Colorado area. The Employers initially executed collective-bargaining agreements with Bricklayers Local 1 ("the Union") before 1959. Stephen Dach, who runs Dach Masonry, was an incorporating member of the Denver Mason Contractors Association (DMCA), which signed a multiemployer agreement with the Union effective for the year 1956 and beyond. David Eatherton, the current president of Eatherton Masonry, carries on the business of his father, Norman Eatherton, who first signed an agreement with the Union on behalf of Eatherton Masonry in 1954. Thereafter, the Employers, through membership in the DMCA, were signatories to successive collective-bargaining agreements. The Union clearly represents a majority among each of the Employers' employees.

1/ Along with the instant cases, the Region submitted five related cases which are different from the instant cases in that they involve employers that joined the multiemployer group involved here on various dates after the 1959 enactment of Section 8(f). These cases are: Soderberg Masonry, Inc., Case 27-CA-10078; John R. Long Co., Case 27-CA-10082; Jerry Grosvenor Masonry, Inc., Case 27-CA-10083; D.E. Farr & Assoc., Case 27-CA-10085; and Dan Berich, Inc., Case 27-CA-10086. These cases will be dealt with separately.

The DMCA, now known as the Colorado Mason Contractors Association (CMCA), was most recently a party with the Union to a contract, which expired on April 30, 1987. 2/

In January, the CMCA timely terminated its agreement and notified the Union that the multiemployer bargaining group was being disbanded. Each employer also sent a timely Section 8(d) notice to the Union.

By letter dated February 5, the CMCA notified the Union that a new multiemployer group was being reconstituted. The Employers were among the group of former CMCA members who were to constitute the revitalized CMCA. The bargaining authorization of each employer, however, was conditioned in part upon the negotiation of a new bargaining agreement before April 1. The Union and the CMCA met on three occasions before that date, but no agreement was reached and the multiemployer group was dissolved. Thereafter the Union met with Eatherton on April 28 and with Dach on April 29. The Employers sought significant concessions in a wide range of economic areas. On April 29 individual bargaining sessions occurred between the Union and the Employers, where they each made a "final offer," which would be open for acceptance until noon on April 30. The Employers stated that Deklewa 3/ would be upheld, apparently meaning that the Employers would no longer recognize the Union if the Union did not accept the terms offered by the Employers. The Union did not agree to the terms offered by the Employers by the stated deadline. On May 1, each of the Employers informed the Union that it was repudiating any existing bargaining relationship and withdrawing any outstanding contract offers. The Employers at the same time changed wage rates and discontinued payments to fringe benefit funds. 4/

ACTION

The Region should issue complaint, absent settlement, alleging that the Union is a Section 9(a) representative of the employees of the Employers and that the Employers violated

---

2/ Unless otherwise indicated, all dates are in 1987.

3/ 282 NLRB No. 184 (February 20, 1987).

4/ The issue of whether this conduct by the employers violates Section 8(a)(5) of the Act has not been submitted for advice.

Section 8(a)(1) and (5) by withdrawing recognition and implementing unilateral changes in terms and conditions of employment.

Prior to the enactment of Section 8(f) on September 14, 1959, an employer in the construction industry could lawfully enter into a collective-bargaining relationship with a union only if that union could show majority support among existing unit employees. Like industrial employers, construction industry employers were prohibited under Section 8(a)(2) from recognizing or entering into a collective-bargaining agreement with a union at a time when that union did not enjoy majority support. Since the law generally presumes that parties act lawfully absent clear evidence to the contrary, 5/ there is a presumption here that the parties' pre-1959 bargaining relationships were lawful Section 9(a) relationships. In the instant case, there is no evidence to rebut the presumption. Further, even if there were evidence that the Employers' initial recognition of the Union was not based upon a showing of majority support, that showing would be time-barred under Section 10(b) because recognition occurred more than six months prior to the filing of the instant charges. 6/

For these reasons, we concluded that the Union has had a Section 9(a) bargaining relationship with each of the Employers since their initial collective-bargaining agreements were executed before 1959. Thus, in each case, the Union is entitled to a continuing presumption of majority status. The Employers have not demonstrated a good faith doubt of that majority status. Indeed, the Region has found that there is no question but that the Union represents a majority of each employer's workforce. Accordingly, the Employer violated Section 8(a)(1) and (5) by repudiating the bargaining relationship.

H.J.D.

5/ See Amalgamated Packinghouse Workers (Packerland Packing Co.), 218 NLRB 853, 854 (1975).

6/ See Local Lodge 1424, IAM, (Bryan Mfg. Co.) v. NLRB, 362 U.S. 411 (1960).